IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8142 OF 2007

Shri Nagnath Shankarrao Jagadale ..Petitioner

Vs.

Divisional Traffic Superintendent
and anr. ..Respondents

Mr. Amol P. Mhatre for petitioner.
Mr. C.M. Lokesh i/by M/s.G.S.Hegde and Associates for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : December 10, 2007.

P.C.:

1. Heard Mr. Mhatre the learned counsel for the petitioner who is holding a post of Conductor under the respondent - Corporation. On 15/10/1999 the petitioner was on duty on the respondent - Corporation Bus on Kharghar - Panvel route and at Kalamboli stop when the checking squad checked the Bus, it noticed that seven passengers travelled from Kopra to Kalamboli were without tickets. They stated that the petitioner had collected the fare amount but did not issue tickets to them and in addition an amount of

Rs.49/- was found short. As per the petitioner he was in the process of issuing the tickets and the tickets were still in his hands. He was charge-sheeted on 25/10/1999 and a Departmental Enquiry was conducted. The Enquiry Officer submitted his findings on 9/12/2000 and a second show cause notice was issued on the same day. On receipt of the same, the petitioner immediately approached the Labour Court and filed Complaint (ULP) No. 576 of 2000 apprehending his termination from service and alleging that by issuing second show cause notice he was likely to be dismissed from service and the same act of the Corporation would be nothing short of an unfair labour practice within the meaning of Item 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Labour Court by its first order on the preliminary issue passed on 19/7/2005 held that the enquiry was conducted in keeping with the principles of natural justice. It further held that the findings of the Enquiry Officer were legal and valid. However, in the second part of its judgment the Labour Court held that it has the power to examine the issue of disproportionate punishment and on the basis of the evidence it came to the

conclusion that the punishment of dismissal from service was not warranted, it was grossly disproportionate and, therefore, the respondent - Corporation was guilty of unfair labour practice. Consequently by its judgment and order dated 8/5/2006 the learned Judge of the Labour Court directed to withdraw the show cause notice dated 9/12/2000 and instead directed to award the punishment withholding of one increment of the complainant permanently.

2. The Corporation challenged the Labour Court's order of interference in the proposed punishment by filing Revision Application (ULP) No. 6 of 2007 and the said revision application has been allowed by the learned Member of the Industrial Court by his judgment and order dated 12/10/2007 and hence this petition.

3. Though the petition has been claimed to have been filed under Article 226 and 227 of the Constitution, having regards to the prayer for quashing and setting aside the order of the Industrial Court, this petition is being treated as the one filed under Article 227 of the Constitution.

4. The learned member of the Industrial Court examined the record which was placed before the Labour Court and noted that the petitioner's service record was so bad that the Labour Court could not have neglected it while holding that the punishment of dismissal as proposed was grossly disproportionate. At Exh. 35 was the petitioner's past service record and it indicates that on 2-3 occasions he was punished for absenteeism, on another 2-3 occasions he was punished for showing less amount and on one occasion he was punished for showing excess amount. There were at least 13 to 14 instances when the petitioner was punished on account of passengers having been found travelling without tickets and the ticket amount varied from Rs.20/- to Rs.50/-. Certainly the petitioner's past service record was far from being satisfactory and he was, in fact, habituated on not issuing tickets to the passengers. In the span of 7 to 8 years (1990 to 1998) there were more than 20 occasions when the petitioner was punished for similar acts of misconduct as were set out in the charge-sheet dated 25/10/1999. The Labour Court also did not

consider that the complainant was a public servant.

5. In addition, when the Labour Court had held in the first part that the enquiry was fair and proper and the findings of the Enquiry Officer holding the petitioner guilty were just and proper, having regards to the past record of service it fell in gross error in recording a finding that the proposed punishment of dismissal from service was disproportionate to the nature of the charges. The Industrial Court, therefore, rightly stepped in and set aside the order passed by the Labour Court. Consequently, the complaint filed by the petitioner has been dismissed. It is for the management to proceed further and I am satisfied that the reasoning set out by the Industrial Court in support of the impugned order can neither be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution.

6. The petition is rejected summarily.

. Oral application for stay to the operation of

this order is hereby rejected.

(B.H. Marlapalle,J.)